

EXHIBIT 1 BOH
DATE 1/12/09
HB 136

**TESTIMONY IN FAVOR OF HB 136
HOUSE BUSINESS AND LABOR COMMITTEE
JERRY KECK, ADMINISTRATOR
EMPLOYMENT RELATIONS DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
January 12, 2009**

Mr. Chairman, members of the committee, my name is Jerry Keck. I am the administrator in the Employment Relations Division of the Department of Labor and Industry. The Employment Relations Division is responsible for providing staff support to the Board of Personnel Appeals (BOPA). BOPA hears disputes arising out of the Montana Collective Bargaining Act that applies to public sector employers and the unions representing their employees.

First, I would like to thank Rep. Boland for carrying this bill. HB 136 is a pretty simple, straightforward bill. It is intended to correct an inconsistency identified in a legislative audit. (Pass out audit finding). We agreed with the legislative auditor and requested this bill. As Rep. Boland has pointed out, several people reading the language of the bill as drafted believe it does not clearly give the Governor authority to appoint the substitute members for a 4 year term. That has been the practice for the past 10 years and all we are trying to accomplish is to codify the current practice. So we have prepared an amendment to make the intent and purpose clearer. We also believe it accomplishes the goal in a simpler manner and actually shortens the section of statute that authorizes BOPA.

The amendment strikes in its entirety subsections (4) and (5). It adds to subsections (3) (a) (i), (ii), and (iii) authority for the Governor to appoint a substitute member for each category of regular board members. We believe this is a more direct, artful, and simple way to accomplish the desired outcome than the original language that was proposed.

Mr. Chairman, members of the committee, the Department requests that you support HB 136. I am happy to try to answer any questions. Thank you.

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Noncompliance with State Laws

The department is not in compliance with several state laws.

We noted the following instances discussed in the table where the department is not in compliance with state law.

Table 6
Noncompliance with State Laws

Section of MCA	Department's Noncompliance
Section 39-71-201(5b), MCA-Requires workers' compensation assessments based on 3% for inactive Plan 1 members.	In fiscal year 2006 the department charged eight inactive entities a minimum of \$500 assessments which were greater than the three percent assessments provided by law.
Section 2-15-1705(5), MCA-Requires Board of Personnel Appeals to appoint substitute members.	Since 1997 the Governor has appointed the substitute members.
Sections 37-18-302 and 37-19-403(2), MCA-Requires certain fees for veterinarians and funeral services be commensurate with costs.	The department does not have cost justification for the fees because they adhere to Section 39-1-134, MCA, that require for each board the overall fees be commensurate with costs.
Section 50-73-409, MCA-Requires three copies of the statement of condition be posted for mine inspections where a local union has jurisdiction.	The department does not post three copies of the statement of condition because they believe three copies are redundant since at all of the mines there is just one central location for this type of notice.
Section 37-4-501, MCA-Requires the Board of Dentistry to prescribe a form for dentists to use when they employ a business to make and/or repair prosthetic or surgical orthodontic applications.	The board has not created or prescribed any such work forms and department personnel did not know why the board has not complied. After this issue was brought to the departments a form was developed.
Section 37-16-202(4), MCA-Requires the Board of Hearing Aid Dispensers to carry out periodic inspections of facilities of persons who practice or engage in the business of fitting or selling hearing aids.	The board does not perform the inspections.
Sections 37-4-327(2), 37-7-324, & 37-16-408, MCA-Requires that fines and penalties for the Board of Dentistry, Board of Pharmacy, and Board of Hearing Aid Dispensers be deposited in the State Special Revenue Fund.	All fines and penalties received during the audit period (totaling \$2,200) for these boards were deposited in the General Fund.

Source: Compiled by the Legislative Audit Division from department records.

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The department should comply with laws discussed in Table 6. In some instances, the department should consider whether legislation should be proposed to amend the laws.

RECOMMENDATION #13

We recommend the department comply with state laws discussed in Table 6.

Amendments to House Bill No. 136
1st Reading Copy

Requested by Representative Carlie Boland

For the House Business and Labor Committee

Prepared by Bartley Campbell
January 12, 2009 (9:01am)

1. Title, line 5.

Following: "APPOINT"

Strike: "A"

2. Title, line 6.

Strike: first "MEMBER"

Insert: "MEMBERS"

3. Page 1, line 17.

Following: "members"

Insert: "and three substitute members"

4. Page 1, line 19.

Following: "activities"

Insert: "and a substitute member with the same qualifications as the other two members who is to serve in place of an absent member and to participate only in the decisions of the proceeding that the substitute member is attending"

5. Page 1, line 21.

Following: "board"

Insert: "and a substitute member with the same qualifications as the other two members who is to serve in place of an absent member and to participate only in the decisions of the proceeding that the substitute member is attending"

6. Page 1, line 22.

Following: "officer"

Insert: ", and a substitute member with the same qualifications as the other member who is to serve in place of an absent member and to participate only in the decisions of the proceeding that the substitute member is attending"

7. Page 1, following line 24.

Insert: "(c) A substitute board member is entitled to the same compensation and per diem when serving as the other members of the board."

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8. Page 1, line 25 through page 2, line 6.

Strike: subsections (4) and (5) in their entirety

Renumber: subsequent subsections

- END -